

into competitive advantage in the intraLATA toll arena.

Id., p. 15, Ordering Paragraph 4.

Like the intraLATA toll market, U S WEST is in a similar dominant monopoly position in the provision of its MegaBit Service. In the toll market, U S WEST is the dominant monopoly provider of 1+ equal access. As a result, many long distance customers contact U S WEST to choose a Primary Interexchange Carrier (long distance company). U S WEST controls the actual PIC change process from beginning to end. Only U S WEST can process PIC requests.

31. Like the toll market, many MegaSubscriber customers contact U S WEST to subscribe to MegaSubscriber Service and choose a MegaCentral Destination Channel. Because U S WEST has promoted a special number, 1-888-MEGA-USW to order MegaSubscriber service, this is normally the customer's first point of contact to order this regulated service. Only U S WEST provides MegaSubscriber Service. As with the toll market, only U S WEST can route customers to a MegaCentral customer, similar to routing subscribers to different long distance providers through the PIC change process. U S WEST controls the selection of a MegaCentral destination by MegaSubscribers. Only U S WEST can process MegaSubscriber change request orders. The MegaSubscriber change charge is \$45.00. Thus, every time a MegaSubscriber customer chooses a different ISP (i.e., a different Destination Channel), U S WEST will charge the customer \$45.00. In contrast, the tariffed PIC change charge is \$5.00.

The 1-888-MEGA-USW number is the number U S WEST, the regulated entity, has directed customers to call to order MegaSubscriber Service. Thus, this number serves as the U S WEST business office and should comply with the Commission's business office practices for competitive neutrality. The voice recording improperly directs customers to U S WEST's non-regulated Internet Service through U S WEST.NET when customers call to purchase a regulated service.

U S WEST has indicated that it will create two toll-free numbers, one for U S WEST.NET and another number for all other ISP's. A two-number system is discriminatory as it takes U S WEST's business office and makes it the same location where U S WEST.NET is marketed. The business office should provide competitively neutral access to U S WEST's MegaBit Service. This could, for example, be accomplished by asking for the following information:

- a. if you currently have an Internet Service provider, press 1;
- b. if you do not have an Internet Service provider, press 2;
- c. customers pressing #1 will be informed of whether their current ISP has a MegaCentral;
- d. if the current ISP does not have a MegaCentral or the customer presses #2, the customer shall be informed of ISPs with MegaCentrals in a manner consistent with intraLATA toll restrictions.

The adoption of a two-number marketing scheme would create further blurring of business office practices in marketing U S WEST's regulated MegaBit service and U S WEST's unregulated affiliate, U S WEST.NET. The 1-800-MEGA-USW number is now known to consumers wishing to order MegaBit service. Thus, the Commission should assure that the 1-888 MEGA-USW number provides a competitively neutral response to customers regarding selection of Internet service providers.

VII. SERVICE QUALITY STANDARDS AND CUSTOMER REMEDIES REQUIRED.

Under Minnesota law, U S WEST is required to provide adequate service at fair and reasonable rates. Specifically, Minn. Stat. § 237.06 states, in pertinent part:

Reasonable rates and service. It shall be the duty of every telephone company to furnish

reasonably adequate service and facilities for the accommodation of the public, and its rates, tolls, and charges shall be fair and reasonable for the intrastate use thereof. All unreasonable rates, tolls, and charges are hereby declared to be unlawful.

As stated above, MegaBit Service is a regulated telecommunications service being offered by U S WEST under the Advanced Communications Services Price List filed with the Commission. With respect to installation standards, the terms contained in the Price List state, in pertinent part:

The furnishing of MegaBit Services requires certain physical arrangements of facilities of the Company and is subject to the availability of such facilities, as set forth in Section 2.1.2. (MegaBit Tariff, Section 8.2.B, p. 6).

Section 2.1.2 of U S WEST's Price List relates to general limitations of installation and restoration of Advanced Communications services. This Section cross-references the Access Service Tariff, Section 13, concerning the Telecommunications Service Priority (TSP) system. The TSP system refers to restoration of existing services but not installation of new services. Thus, the MegaBit Service Price List does not provide any specificity regarding standards related to the timeliness of installing MegaSubscriber or MegaCentral Service.

In fact, no provision in Section 2 of the Advanced Communications Services Price List (General Regulations) or Section 8 of the Advanced Communications Services Price List (MegaBit services) service standards relate to the timeliness of installing MegaSubscriber or MegaCentral Service. In addition, there are no terms in the MegaBit Service Price List related to customer specific remedies for the Company's failure to install MegaBit services in a timely manner.

The fact that the MegaBit Price List does not contain specific service standards or customer remedies can lead to favoring of U S WEST's non-regulated Internet Service by assuring that it receives preferential treatment in the ordering and provisioning process. There is no mechanism to assure that an ISP who places a timely order will receive service as promptly as U S WEST's affiliate.

The monopoly telephone company's ATM network is the transport vehicle for all high-speed service in U S WEST territory. As such, capacity on that backbone is essential to assure that the "last mile" speeds offered can be achieved.

Monitoring and reporting of capacity needs and potential constraints, whether they be on the port (switch side) or in the shared transport vehicle, is vital to all MegaCentral customers. U S WEST has not provided its ISP customers with information they need about the capacity in U S WEST's central offices to plan their marketing of MegaSubscriber service. ISPs need to know how many circuits, ports and DSLAMs are available in each central office so they can market effectively.

VIII. INTERNET SLAMMING.

ISPs have also complained that some MegaSubscriber customers have been "slammed" by U S WEST to U S WEST.NET service, in spite of the customers choosing another ISP and even when the ISP has placed the order for the customer. See Attachment B. Slamming is typically referred to as the unauthorized switching of a person's long distance service from one long distance provider to another provider. In this context, slamming occurs by the unauthorized switching of a MegaSubscriber's designated MegaCentral provider. In other words, the customer's Internet Service Provider is switched without the customer's authorization.

U S WEST has not disputed that certain unauthorized changes have occurred.

IX. RESALE.

U S WEST refuses to provide MegaBit services at a wholesale price for resellers.

The Telecommunications Act of 1996 requires U S WEST "to offer for resale at wholesale rates any

telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." 47 USC 251(c)(4). State law also requires U S

WEST to resell its services. Minn. Stat. § 237.121(5).

X. REQUEST FOR RELIEF.

Based on the foregoing allegations, the Department of Public Service and the Office of Attorney General seek the following relief:

1. Business Office Practices.

a. U S WEST shall utilize a competitively neutral message in advertising and promoting DSL Service as described herein. If the Commission believes U S WEST can comply with this directive by establishing two toll-free numbers, the current toll-free number, 1-888-MEGA-USW, should be assigned to independent Internet Service providers, not U S WEST.NET.

b. U S WEST shall not engage in cross-selling its Internet Service to MegaSubscribers who are (1) already signed up with a DSL-compatible ISP, and/or (2) MegaSubscribers who move from one location to another.

2. Discrimination.

The Commission should either determine that U S WEST unlawfully favored its affiliate or alternatively order further investigation of the facts and circumstances surrounding installation of U S WEST.NET's and other ISP's MegaCentrals and take appropriate remedial action, and refer any violation of rule or statute to the Attorney General.

On a prospective basis, the Commission should require that U S WEST detail procedures that specify how time-frames for installations will be treated in a non-discriminatory manner; how service quality will be insured, how and to whom information on capacity will be reported; how deployment of technicians occurs; in what manner its orders are placed and filled; and other appropriate matters.

3. Monitoring and Reporting.

The Commission should require U S WEST to develop quality reports on capacity and availability of facilities related to MegaBit Service. Information on the capacity of the network should be provided to all ISPs on a regular basis and may include:

- a. availability of MegaCentral/MegaSubscriber ports in various central offices;
- b. regular periodic reporting (e.g. daily, hourly or weekly) of transmission speeds on the ATM network; and
- c. facilities in place for DS1/DS3 connections to various MegaCentral locations.

4. Internet Slamming.

The Commission should require U S WEST to establish verification procedures to assure that there is no unauthorized change in a customer's Internet Service provider.

5. Resale.

The Commission should require U S WEST to file a tariff to provide MegaBit services at wholesale prices.

6. Promotion.

The Commission should prohibit U S WEST from conducting another promotion of MegaBit services until U S WEST changes its business office practices to assure competitive neutrality.

Dated: September 10, 1998.

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CERTIFICATE OF SERVICE

I, Linda M. Blair, a secretary with the law firm of Cole, Raywid & Braverman, L.L.P., do hereby certify that copies of the foregoing were sent via hand delivery, this 14th day of September, 1998, to the following:

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